REMARKS/ARGUMENTS

The Applicants respectfully request further examination and consideration in view of the amendments above and arguments set forth fully below. Claims 1-4, 6-10, 12, 13, 15-21, 23, 27-30, 34-36, 40, 41, and 43-52 were previously pending in this application. Within the Office Action, Claims 1-4, 6-10, 12, 13, 15-21, 23, 27-30, 34-36, 40, 41, and 43-52 have been rejected. By the above amendments, Claims 1, 4, 46, 49, and 50 have been amended and new Claims 53-56 have been added. Accordingly, Claims 1-4, 6-10, 12, 13, 15-21, 23, 27-30, 34-36, 40, 41, and 43-56 are currently pending in this application.

Official Notice

Within the Office Action, Official Notice is taken that it is old and well known in the computer related field to have a token in the form of an icon that is visible in the message in order to represent a function object or program. The Applicants respectfully traverse the Official Notice and request that one or more references be provided in lieu of the Official Notice.

The Applicants respectfully request that other Official Notices taken in prior Office Actions be held in abeyance. The Applicants do not concede any Official Notices, and also do not traverse the Official Notices at this time, except as described above.

Amendments to the Claims

By the above amendments, Claims 1, 4, 46, 49, and 50 have been amended and new Claims 53-56 have been added. Support for the amendments to Claims 1, 4, 46, and 50 can be found in the Specification at least at page 11, lines 11 to 15. Claim 49 has been amended to move several limitations up into Claim 46. Support for new Claim 53 can be found in the Specification at least at page 8, lines 16 to 18. Support for new Claims 54 and 55 can be found in the Specification at least at page 17, lines 16 to 21. Support for new Claim 56 can be found in the Specification at least at page 17, line 22 to page 19, line 3. By the above amendments, no new matter has been added.

Claim Rejections – 35 U.S.C. §103(a)

Within the Office Action, claims 1-4, 6-10, 12, 13, 15-21, 23, 27-30, 34-36, 40, 41, and 43-52 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the article titled Argos in view of the article titled Recommend-it.com ("Recommend-it"). The Applicants

respectfully disagree.

Argos teaches an incentive scheme, "designed to reward customers for referring family and friends to DX." [Argos, page 1, ¶ 1]. "Customers refer colleagues, friends or family to DX by completing a DX Collect cheque with name and address details. Customers then collect points for purchases made by the referee." [Argos, page 1, ¶ 3]. The customer collects points for purchases made by the referees. The customer's points are stored on a database. [Argos, page 1, ¶ 3]. Argos teaches that the first party collects points for any product purchased from DX by the referee (second party).

Recommend-it teaches a free referral service for web sites. A web site host provides a link to Recommend-it, indicated by the Recommend-it logo appearing on the web-site. A web-site user clicks on Recommend-it's logo, and fills out a form about the web-site. The form includes fields for the web-site user's email address and name, up to three referee email addresses, and a note from the web-site user to the referees. Recommend-it "let's the user's friends and colleagues know all about your site and how to get there." Recommend-it does not teach offering incentives in exchange for referring a web site. Recommend-it does not teach purchase transactions of one or more marketable entities.

A reference, even an non-enabling, non-patent reference such as Argos or Recommend-it, is prior art for all that it teaches. [MPEP § 2121.01.II, page 2100-55, col. 2, citing *Beckman Instruments v. LKB Produkter AB*]. The Applicants respectfully submit that the references have been credited with teaching far more than the references disclose, alone or in combination, by improperly using the presently-claimed invention as a template to draw hindsight conclusions as to what the references must have taught. [MPEP 2142, page 2100-127, col.2 "[I]mpermissible hindsight must be avoided and the legal conclusion [of obviousness] must be reached on the basis of the facts gleaned from the prior art.", emphasis added].

The Applicants respectfully submit that impermissible hindsight, not facts gleaned from the prior art, have been used to support the legal conclusion of obviousness. Within the Office Action of April 14, 2010 ("the Office Action") it is admitted that Argos does not teach personalizing the referral of the marketable entity (i.e. mobile phone) including a serial number for the marketable entity. After admitting in the Office Action that Argos does not teach personalizing referrals of marketable entities, it is then concluded in the Office Action that it would have been obvious to personalize the marketable entity (which Argos does not teach) by including a serial number in a referral for the marketable entity. [Office Action, page 3, ¶ 3]. Recommend-it does not teach transacting purchases for marketable entities (goods and services).

Thus, Argos, Recommend-it, and their combination do not provide facts gleaned from the prior art in support of the conclusion of obviousness. The facts supporting the legal conclusion of obviousness have been impermissibly taken from the presently-claimed invention. Accordingly, the conclusion of obviousness is improper.

The Applicants respectfully submit that the combination of Argos and Recommend-it is improper because the references teach away from one another with respect to incentives. Argos teaches offering an incentive for a referral. To obtain the incentive, a first party must (1) make a purchase of some product sold by DX, then (2) refer at least one second party <u>to DX,</u> and (3) the second party must purchase <u>something</u>, anything, from DX. Recommend-it does not teach transacting purchases of marketable entities. Recommend-it states that it is "100% Free". [Recommend-it, page 4, "<- It's a free service for you and for sites."; "Recommend-it.Com (tm) is 100% FREE to website owners and Internet Users"]. Recommend-it is free to web-site users, and it is free to web-site owners. Recommend-it draws attention to <u>their</u> source of revenue: advertising. [Recommend-it, page 4, "===== Advertising ===="; "<- It is a free service for you and for sites. We have to eat!"]. Thus, Recommend-it specifically teaches that <u>Recommend-it</u> receives its revenues from advertising, and all other parties (users and web-sites) are not charged any fees and <u>no incentives are paid for referrals</u>. Argos specifically requires that <u>incentives are paid for referrals that result in purchases</u>. The combination of Argos and Recommend-it is improper. Accordingly, the legal conclusion of obviousness based upon the combination of Argos and Recommend-it is improper.

Independent Claim 1

The independent Claim 1 teaches a method of marketing one or more marketable entities to be purchased. The method comprises providing a referral-based service, by a Service Provider, as part of an electronic communications network and infrastructure. The one or more marketable entities are goods or services offered for purchase by the Service Provider. Any purchase transaction of one of the one or more marketable entities is performed by the Service Provider via the communications network and infrastructure. The method further comprises performing a purchase transaction of a marketable entity by a first party using the Service Provider, <u>offering a reward</u> to the first party, by the Service Provider, via the communications network and infrastructure in response to the first party purchasing the marketable entity, the reward is <u>in exchange for a recommendation</u> to a second party regarding the marketable entity <u>that results in a purchase of the marketable entity by the second party</u>. The method continues

with recommending the marketable entity by the first party to the second party, the recommendation comprising the first party forwarding a first e-mail message to the second party, the first e-mail message comprising a personalized referral from the first party for the marketable entity, a first set of data, the first set of data comprising a first serial number and a first URL link to a first Web site of the Service Provider having an offer to transact an exchange for the marketable entity. The method further comprises correlating, by the Service Provider, the first set of data in the first e-mail message to data within a database within the communications network and infrastructure, the data within the database comprising data relating the first party, the reward offered to the first party, the marketable entity, and the second party thereby <u>creating a referral lineage</u>, updating the database with an e-mail address of the second party provided by the first party, forwarding the first e-mail message to the e-mail address of the second party, providing the reward to the first party if the second party purchases the marketable entity, and selectively offering a reward to the second party, by the Service Provider, in exchange for the second party recommending the marketable entity to a third party, independent of whether the second party purchases the marketable entity.

As discussed above, Argos, Recommend-it, and their combination do not teach performing a purchase transaction for a marketable entity by a first party using a Service Provider. Argos, Recommend-it, and their combination further do not teach offering a reward to the first party in exchange for a recommendation to a second party <u>regarding the marketable entity that results in a purchase of the marketable entity</u> by the second party. As discussed above, Argos, Recommend-it, and their combination also do not teach the first party recommending <u>the marketable entity</u> to the second party. Thus, Recommend-it and their combination do not teach correlating a first set of data in an e-mail message containing a referral for the marketable entity with data within a database comprising the first party, the reward offered to the first party, the marketable entity, and the second party, thereby creating a referral lineage. Further, Argos, Recommend-it, and their combination do not teach <u>the Service Provider selectively offering a reward to the second party in exchange for the second party recommending the marketable entity to a third party, independent of whether the second party purchases the marketable entity.</u> For at least these reasons, the independent Claim 1 is allowable over Argos, Recommend-it and their combination.

Claims 2-4, 6-10, 12-21, 23, 27-30, 34-36, 40, 41, and 52 are all dependent from the independent Claim 1. As discussed above, the independent Claim 1 is allowable over Argos, Recommend-it and their combination. Accordingly, Claims 2-4, 6-10, 12-21, 23, 27-30, 34-36,

40, 41, and 52 are all also allowable as being dependent on an allowable base claim.

Independent Claim 46

The independent Claim 46 is directed to a method of marketing comprising transacting a purchase for a first marketable entity by a first party, offering a reward to the first party in response to the first party purchasing the marketable entity, the reward is in exchange for a recommendation of a second marketable entity substantially similar to the first marketable entity to a second party wherein the recommendation results in a purchase transaction, forwarding an e-mail to a second party, the e-mail comprising the recommendation for the second marketable entity by the first party, a from field populated with an e-mail address of the first party, and a URL link to a Web site having an offer to transact a purchase for the second marketable entity, wherein the first marketable entity and the second marketable entity are selected from a group consisting of goods and services, providing the reward to the second party if the second party purchases the second marketable entity. The method further comprises selectively offering a reward to the second party in exchange for the second party recommending the marketable entity to a third party, independent of whether the second party purchases the marketable entity.

Argos, Recommend-it and their combination do not teach transacting a purchase for a first marketable entity by a first party, offering a reward to the first party in response to the first party purchasing the marketable entity, the reward is in exchange for a recommendation of a second marketable entity substantially similar to the first marketable entity to a second party wherein the recommendation results in a purchase transaction. As discussed above, Argos, Recommend-it and their combination do not teach selectively offering a reward to the second party in exchange for the second party recommending the marketable entity to a third party, independent of whether the second party purchases the marketable entity. For at least these reasons the independent Claim 46 is allowable over Argos, Recommend-it and their combination.

Claims 47-49 are all dependent on the independent Claim 46. As discussed above, the independent Claim 46 is allowable over Argos, Recommend-it, and their combination. Accordingly, the Claims 47-49 are all also allowable as being dependent on an allowable base claim.

Independent Claim 50

The independent Claim 50 is directed to a system for marketing. The system of marking comprises means for accessing a database configured for storing data, a computer operatively

coupled to the database, the computer configured to provide access to the Web, means for transacting a purchase for a marketable entity by a first party, means for offering a reward to the first party in response to the first party purchasing the marketable entity, the reward is in exchange for a recommendation that results in a purchase of the marketable entity by a second party, the recommendation comprising a forwarding of a first e-mail message to the second party, the first e-mail message comprising a personalized referral for the marketable entity and a first set of data, the first set of data comprising a first serial number and a first URL link to a first Web site having an offer to transact an exchange for the marketable entity, means for correlating the first set of data in the first e-mail message to data within the database, the data within the database comprising data relating to the reward offered to the first party, means for updating the database with an e-mail address of the second party provided by the first party, means for forwarding the first e-mail message to the e-mail address of the second party, wherein the marketable entity is selected from a group consisting of goods and services, means for providing the reward to the first party if the second party purchases the marketable entity, and means for selectively offering a reward to the second party in exchange for the second party recommending the marketable entity to a third party, independent of whether the second party purchases the marketable entity.

As discussed above, Argos, Recommend-it and their combination do not teach a system for marketing comprising means for transaction a purchase for a marketable entity by a first party, means for offering a reward to the first party in response to the first party purchasing the marketable entity, the reward is in exchange for a recommendation that results in a purchase of the marketable entity by a second party, and means for selectively offering a reward to the second party in exchange for the second party recommending the marketable entity to a third party, independent of whether the second party purchase the marketable entity. For at least these reasons, the independent Claim 50 is allowable over the Argos, Recommend-it and their combination.

Claims 51 and 52 are both dependent on the independent Claim 50. As discussed above, the independent Claim 50 is allowable over Argos, Recommend-it, and their combination. Accordingly, Claims 51 and 52 are both allowable over Argos, Recommend-it, and their combination.

Conclusion

      In view of the foregoing, the Applicants believe all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the Examiner believes that a telephone conference would expedite prosecution of this application, the Examiner is encouraged to contact the undersigned at (408) 530-9700.

      Respectfully submitted,

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Dated: September 13, 2010   By: /Thomas B. Haverstock/

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